98TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 98–2

8(a) PILOT PROGRAM EXTENSION

FEBRUARY 3, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MITCHELL, from the Committee on Small Business, submitted the following

REPORT

[To accompany H.R. 861]

The Committee on Small Business, to whom was referred the bill (H.R. 861) to extend through fiscal year 1984 SBA pilot programs under section 8 of the Small Business Act, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, strike out line 7 and insert in lieu thereof "year 1985. This Act shall take effect October 1, 1983.".

Amend the title so as to read:

A bill to extend through fiscal year 1985 SBA pilot programs under section 8 of the Small Business Act.

THE PURPOSE OF THE BILL

The purpose of the bill (H.R. 861) is to extend through September 30, 1985, two different test or "pilot" programs administered by the Small Business Administration (SBA). These pilot programs are intended to facilitate the ability of SBA to develop small business concerns owned by socially and economically disadvantaged persons.

INTRODUCTION AND BACKGROUND

1. Pilot procurement program

Section 8(a) of the Small Business Act of 1953 gives the Administrator of the Small Business Administration (SBA) the authority to enter into procurement contracts with Federal agencies and, in turn, to subcontract the work to small socially and economically disadvantaged businesses. Under the regular 8(a) procurement program, the Administrator of SBA is merely authorized to request suitable pro-

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curement requirements from Federal buying activities for use in the program. If lower level personnel in the buying activity and SBA cannot agree upon the selection of the requirement, the Administrator of SBA can appeal to the head of the activity (i.e., the Government agency letting the contract), who has final authority to decide the issue.

Public Law 95–507, signed into law on October 24, 1978, established a 2-year pilot procurement program wherein the President would designate any agency with which SBA would have increased authority to negotiate any contract requirement it selects for use in the 8(a) program.

The President selected the Department of the Army as the 8(a) pilot agency on January 10, 1979. On May 24, 1979, SBA and Army entered into an interagency agreement which established the formal terms and arrangements for the implementation of the 8(a) pilot program.

In the 8(a) pilot procurement program, the SBA has the exclusive unilateral authority to select (i.e. reserve) any procurement requirement for use in the program. Appeal to the head of the buying activity (i.e., Army, the Government agency letting the contract) can only be taken when SBA and the lower level personnel in the activity cannot resolve the terms and conditions of the proposed contract. The head of the activity has the exclusive authority to set such terms and conditions but cannot override SBA's selection of the particular requirement.

This pilot was extended for one year by Public Law 96–481 and expired September 30, 1981.

2. Bond waiver pilot

The second pilot program establsihed by Public Law 95–507, allowed the SBA to waive, in certain specific circumstances, and under stringent conditions, Federal bonding requirements that otherwise would attach to Government contracts awarded through the 8(a) program.

These criteria which must be present in order for SBA to waive bonding requirements are:

1. SBA must protect the rights of those supplying materials and labor to the 8(a) contractor;
2. The contractor must be unable to obtain a surety bond even with an SBA guarantee;
3. SBA must work with the contractor so that it becomes bondable; and
4. The contractor must be a start-up concern (SBA has defined this as a firm in a business requiring bonds for less than two years) and must not have been in the 8(a) program for more than one year.

The basic intent of this pilot is to assist a startup firm to obtain a "track record" in a manner commensurate with protecting the interests of materials suppliers and laborers of the 8(a) firm.

However, SBA has not, to date, waived any bonds under this pilot. Final regulations were published on December 17, 1980, but the Agency still has not issued guidelines or standard operating procedures.

NEED FOR THE LEGISLATION

1. Pilot program procurement

As previously discussed, SBA's regular 8(a) program is used to develop socially and economically disadvantaged firms. The Federal procurement needs which are used to channel this assistance are made available only if the procuring agency "volunteers" a given contract for inclusion in the program.

The purpose of the pilot program is to allow SBA to select additional contracts for inclusion in the program. These additional contracts for procurement needs may be of two types: (1) contracts typically "volunteered" by an agency for inclusion in the regular 8(a) program (for example, construction contracts) and (2) contracts typically excluded from those "volunteered" (for example, sophisticated-high technology, large dollar, multiyear/follow-on potential, and/or those with commercial application).

There was a considerable amount of bickering between SBA and the Department of the Army about selecting one type or the other, but not both. Possibly this has been responsible for the dismal performance of this pilot program.

Your committee does not view these types of contracts as mutually exclusive. It is entirely reasonable that both types be selected for inclusion in the program.

Although the pilot has been in effect for three years; only 14 contracts at a value of approximately $100 million have been awarded.

This activity, by fiscal year, is as follows:

Nature	Year	Value (millions)
Trailers for water purification units (total)	1979	$1.9
Reverse osmosis water purification (30 units)	1980	5.0
Upgrading and installing storm windows		4.7
High frequency radio network upgrading		3.8
Radar assembly		2.3
Reverse osmosis water purification (11 units)		1.0
Cargo ammunitions trailer		8.8
Operation and maintenance of air/ground coordination equipment		9.0
Validation and verification of GSRS tactical software		.4
Total 1980		35.0
Instrumentation system phase I	1981	26.7
Construction of liquid waste disposal facility		3.9
Construction of addition to Flight Development Laboratory		9.1
Division level data entry device		16.0
Construction of commissary store		5.0
Total 1981		60.7

It should also be noted that SBA during this three-year period had selected additional contracts for inclusion in the pilot; however, for various reasons the proposed contracts were withdrawn from the program.

2. Bond pilot waiver

As previously noted, surety bonds are required on Federal construction contracts of $25,000 or more. SBA operates a surety bond guarantees program under which it reimburses a surety for losses due to defaults by small business contractors on contracts up to $1 million. SBA administratively has set the guarantee at 90 percent on contracts

up to $250,000 and at 80 percent on contracts between $250,000 and $1 million.

Even with an SBA guarantee, there are small businesses usable to obtain a surety bond and thus not able to participate in the 8(a) program. It was for this reason that a second pilot program, subject to restrictions discussed earlier, authorized SBA to waive surety bond requirements for 8(a) participants.

Although this pilot program has been statutorily authorized for three years, SBA has never implemented it by processing waiver requests.

The General Accounting Office reported on this failure and recommended that this pilot program be extended. This recommendation was made despite an analysis identifying only one contractor which might have benefited from the program.

Your committee notes that there are many more firms which might have benefited.

First, as noted by GAO, SBA regulations limited the program to contracts of $100,000 or less. This limitation is not based upon the statutory provisions of the pilot program.

Second, also as noted by GAO, many SBA district offices either will not admit a firm into the 8(a) program unless it has the capability to obtain bonding or else they will not approve a specific contract for the firm unless it can obtain a surety bond. This action is not based upon statutory provisions but rather upon SBA misconception that such a firm cannot be successful.

Third, some firms which are or could be viable cannot obtain a bond even with an 80 percent or 90 percent guarantee. These are not just firms declined for guarantees by SBA but include those which could not obtain approval from the surety company to even apply to SBA for a guarantee. Thus SBA is never aware of their bonding problems and they could not be identified in the GAO analysis.

Your committee certainly does not advocate waiving bonding requirements in every instance where the firm is not bondable. SBA must exercise sound underwriting judgment in determining when to waive the Miller Act bonding requirements. On the other hand, we do not agree that firms unable to obtain bonds are necessarily likely to fail and thus should not get a waiver.

One of the key criteria which surety companies use in deciding upon surety bond applications is the applicant's track record. They want applicants with a history of having successfully performed the type of contract involved. This is true even if an SBA guarantee could be obtained, as the 10 percent or 20 percent exposure retained by the surety is demed a prohibitive risk. Thus a "catch-22" situation arises—the firm cannot obtain a surety bond because it has not done this type of work in the past and it cannot start to do this type of work because it cannot obtain a bond.

Another limitation imposed by surety companies in contract size. Just as a surety is not interested in bonding a new type of contract, it also wants applicants to have a track record on the amount of the contract involved. Thus, for example, even if the company has successfully performed $100,000 contracts, it probably cannot secure bonding for a $300,000 or $400,000 contract.

Finally, there are statutory limitations on the amount of a contract eligible for an SBA surety bond guarantee—$1 million. Contracts in

excess of this amount are becoming more and more common and are capable of performance by 8(a) firms under SBA's supervision and guidance. For example, of the 14 contracts included in the procurement pilot, all but one were for more than $1 million.

Also, as an aside, your committee noted that one of the fourteen contracts was originally scheduled to be let solely to a small firm but ultimately was let as a joint venture because the small firm could not obtain the requisite bonding.

Thus it is imperative that SBA comply with the law and give this pilot program a fair test. The agency must move forward with the program and not, as in prior years, thwart the will of Congress by refusing to act and in belatedly acting by imposing such restrictions that preclude the program from offering assistance.

As was noted earlier, both of these pilot programs expired September 30, 1981. Legislation was introduced in the last Congress to reinstate both of these pilots. This bill, H.R. 4500, was favorably reported by your committee and was passed by the House on November 17, 1981; however, the bill was indefinitely postponed by the Senate.

WHAT THE BILL WOULD DO

1. Procurement pilot program

H.R. 861 would extend for an additional two years (until September 30, 1985) a pilot procurement program under which the SBA has the exclusive authority to determine which procurement needs of a designated agency are suitable for inclusion in SBA's 8(a) program. Under this program SBA contracts with a Federal agency and then subcontracts the work to an economically and socially disadvantaged firm.

Under the provisions of Public Law 95–507, the President was authorized to select one agency for inclusion in the procurement pilot program. President Carter selected the Department of the Army.

Under this bill the President would again have the discretion to select the agency for the next two years of the pilot. He could continue the Army pilot or select a new agency.

There has been discussion of statutorily selecting an agency or possibly leaving the President with the discretion to select the agency but excluding the Defense Department, and its components. Your committee, however, has not received sufficient information on contract possibilities, either as to dollar amount or type of contracts, which might be available elsewhere. Nor have we received SBA's recommendation of an agency to be selected. Accordingly, we have recommended leaving the selection to the President.

While the committee believes it desirable and necessary that SBA have increased authority to select contracts for award through the 8(a) program, as provided for in the pilot program, it firmly believes that this authority should not be used in a manner detrimental to the general small business community.

In addition, there have been some instances when procurements have been unnecessarily delayed because the item was at least initially reserved by SBA for inclusion in the program. The committee is concerned that such delays not be repeated. As with any new program,

there are bugs to be worked out and by now this should have been done.

Accordingly, SBA is directed to carefully evaluate the feasibility of selecting contracts for inclusion in the program. (whether those contracts be from the Army or another agency) and to closely work with 8(a) pilot program contractors to insure that there is timely performance of all such contracts.

Construction contracts have been a mainstay of the regular 8(a) program as have custodial (i.e. janitorial and K–P) contracts. The reliance by procuring agencies on only a few central areas has, in some instances, virtually excluded all firms except 8(a) pilot program firms from certain Federal contract opportunities. It was not and is not the intent of Congress that this over reliance continue. These types of contracts are not to be excluded from the pilot, but SBA is directed to carefully monitor this situation to prevent its reoccurrence and should use its discretion to include contracts which historically have not been volunteered for the 8(a) program. These "historical exclusions" include but are not limited to:

Sophisticated/high technology contracts;
Contracts with large dollar amounts;
Multiyear contract with follow-on potential; and
Contracts with commercial applications.

Until now, there has been some uncertainty expressed by SBA, Army, and GAO over the purpose of the program. Lest there be any further doubt, the purpose is to both expand the number of contracts and to increase and improve their quality, including the historical exclusions enumerated above. SBA and Army, or whatever agency is selected, are directed to emphasize selection of "historical exclusions" but are specifically directed not to exclude any particular type. In this regard, the committee is not criticizing the number of contract awards involving construction but rather the number of construction contracts reserved by SBA but for various reasons subsequently removed from the program without any contract being awarded. SBA is directed to substantially improve the quality of its selection procedure and to insure that the contractors selected are ready and capable of performing on the selected contracts. SBA, with the cooperation of the designated agency, must take precautions to insure that once a contract is reserved, there is a reasonable likelihood it will be awarded.

The SBA strongly is urged to conduct its programs guided by these principles and not to engage in practices (a) which merely result in shifting contracts between the small and small minority business community, while large business continues to maintain its disproportionate share of the Federal procurement dollar or (b) which impact excessively upon any one type of contract.

2. Bond waiver pilot

Public Law 95–507 also authorized a pilot program whereby the Administrator of the Small Business Administration (SBA) could waive all Federal bonding requirements for certain 8(a) contactors who meet the prescribed criteria.

This program is designed to provide additional but limited business bonding development assistance to 8(a) firms.

H.R. 861 also would extend this pilot program for an additional two years, until September 30, 1985.

CONCLUSION

The bill is the result of extensive consideration by your committee and was unanimously ordered favorably reported, without amendment, to the House.

Your committee believes that the provisions of the bill are needed by those socially and economically disadvantaged business persons participating in SBA's business development program; that it is needed to realize original congressional intent of testing the efficacy of new approaches for economic development; and that it represents a reasonable, adequate and inexpensive means to achieve these purposes.

MATTERS REQUIRED TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clause 2(l)(2) of rule XI of the House of Representatives, the following statement is made relative to the vote on the motion to report H.R. 861:

> A majority of the committee voted in person and was actually present and the motion was approved by a recorded vote of 39 ayes and no nays.

In compliance with clause 2(l)(3) of the rule XI of the Rules of the House of Representatives, the following statements are made:

> With regard to subdivision (A), relating to oversight findings, the committee finds, in keeping with clause 2(b)(1) of rule X, that this legislation is in full compliance with the provision of this rule of the House which states:
>
> "In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee. * * *"

With regard to subdivision (B), relating to the statement required by section 308(a) of the Congressional Budget Act of 1974, the following statement is made relative to the legislation:

> Section 3(a)(2) of the Congressional Budget Act defines the term "tax expenditures" as those revenue losses attributable to provisions of the Federal tax laws which allows a special exclusion, exemption, or deduction, from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability.

None of the provisions of H.R. 861 deals with taxation and thus, in your committee's opinion, this bill does not provide new or increased tax expenditures.

Section 3(a)(2) of the Congressional Budget Act defines the term "budget authority" as authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds.

Under this definition, it is the final action of Congress that authorizes an agency to enter into obligations which constitutes new budget authority. In those cases which entail (1) an authorization for an agency to undertake a program; (2) an authorization for appropriation of funds to permit that agency to enter into obligations; and

(3) an actual appropriation of such funds, it would be only the final action of Congress in appropriating funds which constitutes the budget authority.

None of the provisions of H.R. 861 appropriates funds and thus, in your committee's opinion, the bill does not provide new budget authority. Accordingly, no comparison of budget authority, outlays or tax expenditures or 5-year projections have been made.

With regard to subdivisions (C) and (D), the cost estimate of the Director of the Congressional Budget Office relative to H.R. 861 has been requested but has not been received.

No oversight findings or recommendations have been made by the Committee on Government Operations with respect to the subject matter contained in H.R. 861.

In compliance with clause 2(l)(4) the committee concludes that the provisions of this legislation in and of themselves will have no inflationary impact on prices and costs in the operation of the national economy.

In compliance with clause 7, rule XIII of the House of Representatives, the committee makes the following statement:

The costs attributable to this bill for the current fiscal year and for fiscal years 1984–88 are as follows: Only administrative costs of continuing the pilot programs; no new or additional authorization or appropriation is being provided and it is fully expected that the administrative costs will be minimal and will be paid from the agencies' overall budget.

No cost estimate was submitted by any Government agency on H.R. 861 to your committee.

In your committee's opinion, the above statements fully comply with the Rules of the House of Representatives.

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98TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 98-3

NOTICE OF FEDERAL CONTRACT OPPORTUNITIES

FEBRUARY 3, 1983.—Committed to the Committee on the Whole House on the State of the Union and ordered to be printed

Mr. MITCHELL, from the Committee on Small Business, submitted the following

REPORT

[To accompany H.R. 1043]

The Committee on Small Business, to whom was referred the bill (H.R. 1043) to amend section 8(e) of the Small Business Act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to provide small business with adequate notice of Federal contracting opportunities so that they may prepare and submit bids.

INTRODUCTION AND BACKGROUND

This Committee is charged with the responsibility to carry forward a policy embodied in the Small Busniness Act of 1953:

> to insure a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government . . . be placed with small business enterprise * * *.

However, the small business share of Federal contracts continues to be inadequate. Total Federal contract dollars awarded to small business over the last ten years have grown at only a 1 percent average annual rate, and last year actually decreased.

Congress has always insisted on small business participation in Government procurement because it improves and broadens the competitive base and the defense industrial base; provides innovative technology; lowers procurement costs; performs a vital role in industrial mobilization; and disperses procurement funds industrially and geographically.

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Therefore, the Chairman introduced H.R. 1043, legislation which will improve the small business community's access to Federal procurement information and increase contracting opportunities.

Need for the Legislation

Section 8(e) of the Small Business Act requires that Federal contracting opportunities be published in the Commerce Business Daily. This supposedly insures maximum competition for Government contracts. The reality, however, is that small firms do not have sufficient time to prepare bids and participate in Government procurement. Improved contracting opportunities for small concerns will lead to greater competition and lower prices for the Government.

It is administrative practice to publish procurement notices in the Commerce Business Daily ten days before the issuance of a solicitation, but the practice is not constant, and a notice often first appears on the date a solicitation is issued. In addition, regulations presently provide for a minimum bidding time of twenty calendar days except where "special circumstances" call for a shortened time period. Therefore, instead of a cumulative period of thirty days for solicitation and bid, sometimes there is only an arbitrarily imposed timeframe which exists solely at the procuring agency's discretion. The small firm is at a clear disadvantage since it often lacks the financial and human resources necessary to monitor this discretionary, fluctuating process.

The Committee decided it was necessary to amend the Small Business Act to require a procuring agency to give small businesses fifteen days from the appearance of a notice in the Commerce Business Daily to request copies of a solicitation. An additional thirty days from the issuance of the solicitation would be offered before bids are due. These forty-five days would afford small firms the time to monitor the publication and prepare a bid or proposal. Without creating additional costs for the Commerce Business Daily, this will aid small firms in developing their capacity to do business with the Federal Government and will begin the process of simplification of contracting procedures.

What the Bill Would Do

H.R. 1043 would amend the Commerce Business Daily provisions presently in section 8(e) of the Small Business Act to establish minimum notice requirements for Federal procurements advertised in the Commerce Business Daily: fifteen days between publication of the notice and issuance of the request for bids or proposals and an additional thirty days between such issuance and awarding of the contract.

Conclusion

Your committee believes that this bill will enable small businesses to bid on more Federal contracts by giving them more ample time to learn of contrating opportunities and to prepare and submit their bids. Since these Federal contracts are awarded to the lowest bidder, encouraging more competition from the small business sector will benefit not only small business but also the Federal Government.

Matter Required To Be Discussed Under House Rules

In compliance with clause 2(l)(2) of rule XI of the House of Representatives, the following statement is made relative to the vote on the motion to report H.R. 1043:

A majority of the committee voted in person and was actually present and the motion was approved by a recorded vote of 39 ayes and no nays.

In compliance with clause 2(l)(3) of the rule XI of the Rules of the House of Representatives, the following statements are made:

With regard to subdivision (A), relating to oversight findings, the committee finds, in keeping with clause 2(b)(1) of rule X, that this legislation is in full compliance with the provision of this rule of the House which states:

> In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee. * * *

With regard to subdivision (B), relating to the statement required by section 308(a) of the Congressional Budget Act of 1974, the following statement is made relative to the legislation:

> Section 3(a)(2) of the Congressional Budget Act defines the term "tax expenditures" as those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction, from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability.

None of the provisions of H.R. 1043 deals with taxation and thus, in your committee's opinion, this bill does not provide new or increased tax expenditures.

Section 3(a)(2) of the Congressional Budget Act defines the term "budget authority" as authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds.

Under this definition, it is the final action of Congress that authorizes an agency to enter into obligations which constitutes new budget authority. In those cases which entail (1) an authorization for an agency to undertake a program; (2) an authorization for appropriation of funds to permit that agency to enter into obligations; and (3) an actual appropriation of such funds, it would be only the final action of Congress in appropriating funds which constitutes the budget authority.

None of the provisions of H.R. 1043 appropriates funds and thus, in your committee's opinion, the bill does not provide new budget authority. Accordingly, no comparison of budget authority, outlays or tax expenditures or 5-year projections have been made.

With regard to subdivisions (C) and (D), the cost estimate of the Director of the Congressional Budget Office relative to H.R. 1043 has been requested but has not been received.

No oversight findings or recommendations have been made by the Committee on Government Operations with respect to the subject matter contained in H.R. 1043.

In compliance with clause 2(l)(4) the committee concludes that the provisions of this legislation in and of themselves will have no inflationary impact on prices and costs in the operation of the national economy.

In compliance with clause 7, rule XIII of the House of Representatives, the committee makes the following statement:

The costs attributable to this bill for the current fiscal year and for fiscal years 1984–88 are as follows: only administrative costs are involved; no new or additional authorization or appropriation is being provided and it is fully expected that the administrative costs will be minimal and will be paid from the agencies' overall budget.

No cost estimate was submitted by any Government agency on H.R. 1043 to your committee.

In your committee's opinion, the above statements fully comply with the Rules of the House of Representatives.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 8 of the Small Business Act

Sec. 8. (a) * * *

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(e) It shall be the duty of the Secretary of Commerce, and he is hereby empowered, to obtain notice of all proposed defense procurement actions of $10,000 and above, and all civilian procurement actions of $5,000 and above, from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the daily publication "United States Department of Commerce Synopsis of the United States Government Proposed Procurements, Sales, and Contract Awards", immediately after the necessity for the procurement is established; except that nothing herein shall require publication of such notices with respect to those procurements (1) which for security reasons are of a classified nature, or (2) which involve perishable subsistence supplies, or (3) which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made, or (4) which are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made more than 15 days after the issuance of the invitation for bids or solicitation for proposals, or (5) which are made by an order placed under an existing contract, or (6) which are made from another Government department or agency, or a mandatory source of supply, or (7) which are for personal or professional services, or (8) which are for services from educational institutions, or (9) in which only foreign sources are to be solicited, or (10) for which it is determined in writing by the procuring agency, with the concurrence of the Administrator, that advance publicity is not appropriate or reasonable. *Whenever a procuring agency is re-*

quired to publish notice of procurement actions, it (1) shall issue solicitation for a procurement action only after at least fifteen days have elapsed from the date of publication of a proper notice of the action; and (2) shall foreclose competition under a procurement action only after at least thirty days have elapsed from the date of issuance of the solicitation, or, in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement the date of publication of a proper notice of intent to place the order.

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